UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

AARON ROBINSON,

Plaintiff,

v.

ALEX BINELLO, et al.,

Defendants.

Case No. 5:24-cv-06501-PCP

ORDER GRANTING IN PART AND DENYING IN PART MOTION TO DISMISS

Re: Dkt. No. 19

Plaintiff Aaron Robinson brings this copyright infringement action against defendant Roblox for allegedly allowing game designer Alex Binello to upload Robinson's work without his knowledge or permission to the Roblox platform, where users listened to and downloaded it. Roblox moves to dismiss for failure to state a claim pursuant to Rule 12(b)(6). Roblox also requests judicial notice or incorporation by reference of several pages on the Roblox website. For the following reasons, the Court grants the motion to dismiss as to the contributory copyright infringement claim, denies it as to the direct and vicarious copyright infringement claims, and grants in part the request for judicial notice and incorporation by reference.

BACKGROUND

Robinson is a composer, conductor, and musicologist.[1] In 1993, he performed and recorded Maple Leaf Rag, a song originally composed by Scott Joplin, on piano. He first published the recording on an album in 1993, and then re-published it on another album in 2011. The first album was registered with the United States Copyright Office on June 27, 2024, registration number SR1-002-128.

[1] For purposes of Roblox's Rule 12(b)(6) motion, the Court assumes the truth of the allegations in Robinson's complaint.

Roblox operates an online gaming platform. Users can access the Roblox platform to play games created and uploaded by developers using Roblox software. Roblox Studio provides a toolkit for developers to use to create content for the Roblox platform and the Roblox cloud contains the underlying infrastructure to host content delivered through the Roblox platform.

To create games for the Roblox platform, developers can use assets—images, models, videos, fonts, and audio files—that are stored within the Roblox cloud, or they can import their own assets directly into Roblox Studio. Robinson alleges that when a developer imports their own asset, that asset is reviewed by the Roblox moderation team to determine whether it adheres to Roblox's Marketplace Policy. If the asset passes review, it is assigned a unique ID, which allows it to be shared and downloaded on the platform by other users. When a file is imported to the Roblox platform, the file is copied and distributed to Roblox, which then hosts it on its servers.

According to Robinson, Roblox users can download songs from the Roblox platform to their own "boombox," a feature within the platform, for a fee. When a user plays a song on their boombox, other users in their vicinity can hear it. Users can also sell their boomboxes, including their downloaded songs, and Roblox shares in the profit. Additionally, Roblox users can download assets from the platform to their personal hard drives in order to access them outside of the Roblox platform.

Robinson alleges that, in 2016, defendant Alex Binello, a game designer, created an interactive role-playing game called MeepCity for the Roblox platform. MeepCity became Roblox's most popular game, played by millions of users and visited more than a billion times. The game included a feature that allowed users to gather and talk with each other in a pizzeria, which included a piano that users could play to earn points within the game. Robinson alleges that from 2016 to 2022, Robinson's recording of the song Maple Leaf Rag played on a two-minute loop every time a user sat down at the piano.

Robinson alleges that Binello uploaded Robinson's recording of Maple Leaf Rag for use in MeepCity without Robinson's knowledge or permission and that Roblox employees reviewed and approved the uploaded audio file, created a copy, assigned it a unique asset ID, and stored the copy on the Roblox server. He alleges that "thousands, if not millions," of Roblox users downloaded his

work to their boomboxes for use on the Roblox platform, each paying a fee to Roblox for doing so, and that "thousands, if not millions," of users downloaded his work from the Roblox server to their own personal hard drives.

Robinson asserts three claims against Roblox: (1) direct copyright infringement; (2) contributory copyright infringement; and (3) vicarious copyright infringement.

Roblox now moves to dismiss pursuant to Rule 12(b)(6) and requests incorporation by reference and judicial notice of several Roblox webpages.

LEGAL STANDARD

Federal Rule of Civil Procedure 8(a)(2) requires a complaint to include a "short and plain statement of the claim showing that the pleader is entitled to relief." If the complaint fails to state a claim, the defendant may move for dismissal under Federal Rule of Civil Procedure 12(b)(6). Dismissal is required if the plaintiff fails to allege facts allowing the Court to "draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). "Dismissal under Rule 12(b)(6) is appropriate only where the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable legal theory." *Mendiondo v. Centinela Hosp. Med. Ctr.*, 521 F.3d 1097, 1104 (9th Cir. 2008). To survive a Rule 12(b)(6) motion, a plaintiff need only plead "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007).

In considering a Rule 12(b)(6) motion, the Court must "accept all factual allegations in the complaint as true and construe the pleadings in the light most favorable" to the non-moving party. *Rowe v. Educ. Credit Mgmt. Corp.*, 559 F.3d 1028, 1029–30 (9th Cir. 2009). While legal conclusions "can provide the [complaint's] framework," the Court will not assume they are correct unless adequately "supported by factual allegations." *Iqbal*, 556 U.S. at 679. Courts do not "accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences." *In re Gilead Scis. Secs. Litig.*, 536 F.3d 1049, 1055 (9th Cir. 2008) (quoting *Sprewell v. Golden State Warriors*, 266 F.3d 979, 988 (9th Cir. 2001)).

The Court may take judicial notice of "a fact that is not subject to reasonable dispute" because it is "generally known" or "can be accurately and readily determined from sources whose

accuracy cannot reasonably be questioned." Fed. R. Evid. 201. The doctrine of incorporation by reference permits the Court to treat an extrinsic document as if it were part of the complaint if the pleading "refers extensively to the document" or if "the document forms the basis" of a claim. *Khoja v. Orexigen Therapeutics, Inc.*, 899 F.3d 988, 1002 (9th Cir. 2018). But "if the document merely creates a defense to the well-pled allegations in the complaint, then that document did not necessarily form the basis of the complaint. Otherwise, defendants could use the doctrine to insert their own version of events into the complaint to defeat otherwise cognizable claims." *Khoja*, 899 F.3d at 1002.

ANALYSIS

I. Judicial notice

In support of its motion to dismiss, Roblox submitted several webpages that it contends are incorporated by reference into the complaint or subject to judicial notice such that they should be considered on this motion. Those webpages are the 2024 Roblox Terms of Use, the 2021 Roblox Terms of Use archived on the WayBack Machine, the Roblox webpage entitled "Moderation," the Roblox webpage entitled "DMCA Guidelines," and the Roblox Community Standards.

Roblox asserts that the Court should incorporate by reference Roblox's terms of use because "the use and misuse of the Roblox platform is the crux of Plaintiff's claims." Although Robinson's claims generally relate to the use of the Roblox platform, Roblox has not shown that the existence or contents of the terms of use are in any way material to those claims. *See Toyo Tire Holdings of Ams. Inc. v. Ameri & Partners, Inc.*, No. 23-CV-01300, 2024 U.S. Dist. LEXIS 75204, n. 1 (C.D. Cal. March 13, 2024) ("The court need not consider [the attached exhibits] under the incorporation by reference doctrine because they do not materially bear on the court's analysis."). This case is readily distinguishable from *Libman v. Apple, Inc.*, No. 22-CV-07069-EJD, 2024 WL 4314791 (N.D. Cal. Sept. 26, 2024), in which the court found that Apple's welcome screens were incorporated by reference because the plaintiff's "claims each relate[d] to whether Apple disclosed its [data] collection practices" and the welcome screens "reflect[ed] Apple's representations about its privacy practices and privacy settings." *Libman*, 2024 WL 4314791, at *4. None of Robinson's claims depends on any representations in Roblox's terms of

use. Roblox also proposes that the terms of use should be incorporated by reference because every Roblox webpage that the complaint references contains a link to those terms. But the webpages that the complaint references do not contain the terms of use themselves, only their web addresses, and the links have no relevance to Robinson's claims. The inadvertent and irrelevant reference to the terms is not sufficient to render them incorporated by reference into the complaint.

Roblox requests incorporation by reference of its "Moderation" webpage because Robinson's claims reference it extensively. Indeed, Roblox's moderation practices are central to Robinson's claims and Robinson relies on the "Moderation" webpage for those allegations. The Court therefore grants Roblox's request for the "Moderation" webpage's incorporation by reference.

With respect to the various webpages Roblox has submitted, the Court will take judicial notice of their existence because they are publicly available from a source whose accuracy cannot reasonably be questioned and whose contents can be accurately determined. *See In re Meta Pixel Tax Filing Cases*, 724 F. Supp. 3d 987, 1001 (N.D. Cal. 2024) (holding that publicly available websites are proper subjects of judicial notice). This notice is limited, however, to the existence and contents of the webpages, and does not include notice of the truth of any representations made therein. *See Spy Optic, Inc. v. Alibaba.Com, Inc.*, 163 F. Supp. 3d 755, 762 (C.D. Cal. 2015); *Khoja*, 899 F.3d at 999.

II. Direct copyright infringement

To state a claim for direct copyright infringement, a plaintiff must plead ownership of the copyrighted material, violation of a right granted to copyright holders under 17 U.S.C. § 106, and causation (also referred to as "volitional conduct"). *Perfect 10, Inc. v. Giganews, Inc.*, 847 F.3d 657, 666 (9th Cir. 2017).

Roblox contends that Robinson fails to state a claim for direct copyright infringement because he has not alleged facts showing that Roblox directly caused any infringement of Robinson's copyright. The central question in the causation or volitional conduct inquiry is "who is close enough to the [infringing] event to be considered the most important cause." *Id.* (cleaned up). The volitional conduct element "simply stands for the unremarkable proposition that

proximate causation historically underlines copyright infringement liability no less than other torts." *Id.* (cleaned up). "[*D*]*irect* liability must be premised on conduct that can reasonably be described as the *direct cause* of the infringement." *VHT, Inc. v. Zillow Grp., Inc.*, 918 F.3d 723, 731 (9th Cir. 2019) (cleaned up). Direct infringement "requires copying *by* the defendant, which comprises a requirement that the defendant cause the copying." *Fox Broad. Co. v. Dish Network L.L.C.*, 747 F.3d 1060, 1067 (9th Cir. 2014) (cleaned up).

Roblox contends that Robinson alleges facts showing only that it operated an "automated, user-controlled system," an act that is too indirectly related to the cause of any infringement to constitute volitional conduct. But Robinson alleges that Roblox took a more active role in the upload of his work. Robinson alleges that when a user or developer imports a file containing music, that file is reviewed by the Roblox moderation team to determine whether it adheres to Roblox's Marketplace Policy. The file is only transmitted after the moderation team's approval. Robinson thus alleges that Roblox employees reviewed and approved Binello's upload of Robinson's copyrighted work, created a copy of that work, and stored that copy on the Roblox server. Accordingly, Robinson has pleaded that Roblox *caused* the copying of Robinson's work.

Roblox's alleged involvement in the infringement of Robinson's copyright is distinguishable from the conduct at issue in *VHT, Inc. v. Zillow Group, Inc.*, 918 F.3d 723 (9th Cir. 2019). In that case, the Ninth Circuit affirmed a district court's determination that Zillow did not engage in the volitional conduct necessary to support a finding of direct liability where it merely operated a website displaying photos that other parties had provided. Zillow did not select the photos, did not "exercise control over [the] photos beyond the general operation of its website," and promptly removed allegedly infringing photos when it was notified about them. *Id.* at 733 (cleaned up). Here, by contrast, Robinson alleges that, through the actions of the moderation team, Roblox in fact selected and exercised control over the content that a third party provided.

Roblox maintains that "if Roblox did *not* have any moderators, then the upload would still have occurred." Perhaps. But the question before the Court is not whether the alleged copyright infringement would have occurred if Roblox had operated its platform differently; the question is

whether, given that Roblox allegedly had a moderation team that reviewed and approved all uploads, the moderation team's approval of Binello's upload was a but-for cause of the alleged infringement of Robinson's copyright. Robinson alleges that it was. He asserts that, given Roblox's moderation policies, his copyrighted work would not have been uploaded to the platform but for the actions of Roblox's moderators.

Roblox also contends that the allegations regarding the moderation team are conclusory and involve "nothing but speculation." Although Robinson has not alleged facts detailing every step in the moderation process, the facts that he has alleged—that after Binello uploaded Robinson's recording, Roblox's moderation team reviewed the file to ensure that it adhered to its Marketplace Policy, approved the upload, created a copy, assigned the file a unique asset ID, and stored the copy on the Roblox server—are sufficient to state a claim at the motion to dismiss stage. The Supreme Court underscored in *Iqbal* that "determining whether a complaint states a plausible claim for relief will … be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." 556 U.S. at 679. In the context of allegations concerning a process generally concealed from the public and largely inscrutable absent discovery, demanding even greater specificity would effectively foreclose liability, far exceeding the demands of Rule 8. Fed. R. Civ. P. 8.

Even if its moderation team did engage in volitional conduct, Roblox maintains, any direct copyright infringement claim is time-barred because the latest time that its volitional conduct could have occurred was the end of 2016. The statute of limitations for federal copyright claims is three years, 17 U.S.C. § 507, and Robinson did not bring this action until 2024—five years after the limitations period had expired, according to Roblox.

In the Ninth Circuit, the statute of limitations is an affirmative defense that can provide the basis for dismissing a claim at the 12(b)(6) stage only if the allegations in the complaint or judicially noticeable materials establish beyond dispute that the statute ran prior to the filing of the case. *A.B. by & Through Turner v. Google LLC*, 737 F. Supp. 3d 869, 877–88 (N.D. Cal. 2024); *Jablon v. Dean Witter & Co.*, 614 F.2d 677, 682 (9th Cir. 1980) ("When a motion to dismiss is based on the running of the statute of limitations, it can be granted only if the assertions of the

complaint, read with the required liberality, would not permit the plaintiff to prove that the statute was tolled."). Thus, to survive a motion to dismiss, plaintiffs "simply need to plead facts demonstrating a potential factual dispute that could affect whether the defense applies." *Rabin v. Google LLC*, 725 F.Supp.3d 1028, 1031 (N.D. Cal. Mar. 26, 2024).

Here, the parties dispute when Robinson's statute of limitations began to run. Under the discovery rule, a copyright infringement claim accrues when the copyright owner reasonably should have discovered the alleged infringement. *See Starz Entertainment, LLC v. MGM Domestic Television Distribution, LLC*, 39 F.4th 1236 (9th Cir. 2022). Roblox asserts that the popularity of Roblox and MeepCity put Robinson on notice of the infringement of his work before 2021. But the inferential chain from the general popularity of a gaming platform and one of the games on it, on the one hand, to a musician's awareness that his decades-old recording might be being used in an infringing matter, on the other, is too attenuated. Although copyright owners have a duty of diligence to investigate potential infringement when some action calls their attention to it, they are not required to actively prowl the internet to ensure no one is using their music in video games. *See id.*; *Starz Ent., LLC v. MGM Domestic Television Distribution, LLC*, 510 F. Supp. 3d 878, 888 (C.D. Cal. 2021) (cleaned up) ("Although a copyright holder has a duty of diligence to investigate potential infringements, inquiry notice must be triggered by some event or series of events that comes to the attention of the aggrieved party."); *Starz*, 510 F. Supp. 3d at 888 (quoting *Warren Freedenfeld Assocs., Inc. v. McTigue*, 531 F.3d 38, 45 (1st Cir. 2008)) ("The familiar aphorism teaches that where there is smoke there is fire; but smoke, or something tantamount to it, is necessary to put a person on inquiry notice that a fire has started."). Roblox has not identified any specific allegation in the complaint establishing that Robinson was on inquiry notice of the alleged copyright infringement prior to 2021. Roblox has thus failed to establish beyond dispute that Robinson's claim for direct copyright infringement is time-barred.

III. Contributory copyright infringement

To state a claim for contributory copyright infringement, a plaintiff must allege that the defendant "(1) knew of the direct infringement; and (2) [ ] either induced, caused, or materially contributed to the infringing conduct." *Luvdarts, LLC v. AT & T Mobility, LLC*, 710 F.3d 1068,

1072 (9th Cir. 2013). The first element "requires more than a generalized knowledge by the [defendant] of the possibility of infringement." *Id.* The plaintiff must allege "actual knowledge of specific acts of infringement." *Id.* (citation omitted); *see also Long v. Dorset*, 854 F. App'x 861, 864 (9th Cir. 2021); *A&M Recs., Inc. v. Napster, Inc.*, 239 F.3d 1004, 1021 (9th Cir. 2001) (cleaned up) ("[I]f a computer system operator learns of specific infringing material available on his system and fails to purge such material from the system, the operator knows of and contributes to direct infringement. Conversely, absent any specific information which identifies infringing activity, a computer system operator cannot be liable for contributory infringement merely because the structure of the system allows for the exchange of copyrighted material.").

Robinson contends that Roblox's conduct meets the knowledge requirement because Roblox was generally aware of the copyright-related risks of its business activities. He alleges that Roblox has a history of litigation involving copyright claims and that Roblox had ample opportunity to ensure the works uploaded to its server did not infringe anyone's copyrights. He also argues that Roblox was obligated to undertake a reasonable inquiry to determine whether a work was licensed for Roblox's use or in the public domain.

These allegations are not sufficient to allege the knowledge necessary for contributory copyright infringement liability. Robinson must show actual knowledge of *specific acts* of infringement, not *generalized knowledge of the possibility of infringement*. Roblox has not pleaded facts to show that Roblox was aware that the recording of Maple Leaf Rag that Binello uploaded was Robinson's copyright-protected audio recording.[2] Accordingly, Robinson fails to state a claim against Roblox for contributory copyright infringement.

IV. Vicarious copyright infringement

A defendant "is liable for vicarious infringement if it (1) has the right and ability to control … users' putatively infringing activity and (2) derives a direct financial benefit from their activity." *MDY Indus., L.L.C. v. Blizzard Ent., Inc.*, 629 F.3d 928, 938 (9th Cir. 2010). A defendant "infringes vicariously by profiting from direct infringement while declining to exercise

[2] Notably, it is undisputed that the song Maple Leaf Rag is now in the public domain.

a right to stop or limit it." *MGM Studios Inc v. Grokster, Ltd.*, 545 U.S. 913, 914 (2005).

Roblox does not challenge Robinson's allegation that it had the right and ability to permit or prevent users' copyright infringing activity on its platform. It does, however, contend that it did not derive a direct financial benefit either from Binello's alleged infringement of Robinson's copyright when he uploaded his work to the Roblox server or from other users' infringement of that copyright when they downloaded the work to their boomboxes.

A direct financial benefit exists where there is a causal relationship between the specific infringing conduct and a financial benefit to the defendant. *Perfect 10*, 847 F.3d at 673 (quoting *Ellison v. Robertson*, 357 F.3d 1072, 1079 (9th Cir. 2004)) ("The essential aspect of the 'direct financial benefit' inquiry is whether there is a causal relationship between the infringing activity and any financial benefit a defendant reaps, regardless of how substantial the benefit is in proportion to a defendant's overall profits.").

Roblox asserts that it did not derive a direct financial benefit from any infringement of Robinson's copyright because users did not seek out Roblox or MeepCity specifically because of Robinson's recording of Maple Leaf Rag. But Roblox misconstrues the direct financial benefit requirement. When the financial benefit to a defendant is alleged to come from the use of the defendant's goods or services *generally*, rather than directly from the copyright infringement, courts have held that plaintiffs must show that individuals sought out the defendant's goods or services specifically because of the availability of infringing material. *See, e.g.*, *Perfect 10*, 847 F.3d at 673; *Stross v. Meta Platforms, Inc.*, No. 2:21-CV-08023, 2022 WL 1843129, at *3 (C.D. Cal. Apr. 6, 2022); *Ellison*, 357 F.3d at 1078–79. Absent such a showing, there would be no causal link between the infringement and the financial benefit. But where, as here, the financial benefit is alleged to come directly from specific acts of infringement—specifically, from fees that were paid for each upload or download of the specific infringing work—there is a clear causal link between the infringement and the financial benefit. Because the financial benefit to Roblox is not alleged to derive from individuals' use of Roblox or MeepCity generally, Robinson need not allege a causal connection between individuals' use of the platform or game and the alleged infringement.

Robinson alleges that Roblox makes money by charging developers and users to import assets and that Binello uploaded Robinson's recording of Maple Leaf Rag as an asset to be used in MeepCity. It can plausibly be inferred from Robinson's allegations that Roblox charged Binello a fee to upload Robinson's work, deriving a direct financial benefit from Binello's alleged act of copyright infringement. Additionally, Robinson alleges that "thousands, if not millions," of users each paid Roblox a fee to download Robinson's work for use within the Roblox platform. Those fees constitute a direct financial benefit that Roblox derived from those users' acts of infringing Robinson's copyright.

Finally, Roblox contends that downloading the work to Roblox boomboxes cannot be copyright infringement because songs downloaded to boomboxes can be played solely within the platform. But copying is copying even if the use of the copy is restricted.

Accordingly, Robinson's complaint states a claim for vicarious copyright infringement.

V. DMCA safe harbor

Finally, Roblox asserts that even if Robinson adequately states a claim against it, his complaint should be dismissed because Roblox is entitled to the protections of the "safe harbor" provided by the Digital Millenium Copyright Act (DMCA). This safe harbor applies to online service providers who are unaware of infringing material on their sites or who, upon notice, expeditiously remove such material. *See UMG Recordings, Inc. v. Shelter Cap. Partners LLC*, 718 F.3d 1006, 1014, 1028 (9th Cir. 2013); 17 U.S.C. § 512(c)(1)(A). To be eligible for the protections of 17 U.S.C. § 512(c), a defendant must show it is a "service provider" and "that the infringing material was stored at the direction of the user." *Mavrix Photographs, LLC v. Livejournal, Inc.*, 873 F.3d 1045, 1052 (9th Cir. 2017). "If it meets that threshold requirement, the service provider must then show that (1) it lacked actual or red flag knowledge of the infringing material; and (2) it did not receive a financial benefit directly attributable to the infringing activity, in a case in which the service provider has the right and ability to control such activity." *Id.* (cleaned up).

The safe harbor under 17 U.S.C. §512(c) is an affirmative defense. As explained above, affirmative defenses generally "may not be raised on a motion to dismiss except when the defense raises no disputed issues of fact." *Lusnak v. Bank of Am., N.A.*, 883 F.3d 1185, 1194 n.6 (9th Cir.

2018). The defendant must show there is an obvious bar to securing relief evident on the face of the complaint or from judicially noticeable materials. "Only when the plaintiff pleads itself out of court—that is, admits all the ingredients of an impenetrable defense—may a complaint that otherwise states a claim be dismissed under Rule 12(b)(6). *Durnford v. MusclePharm Corp.*, 907 F.3d 595, 603 n.8 (9th Cir. 2018) (citation omitted).

Robinson's allegation that Roblox derived a financial benefit directly attributable to the infringement of his copyright is sufficient on its own to preclude Roblox from establishing beyond dispute that it is entitled to the protections of the DMCA safe harbor. *See* 17 U.S.C. § 512(c)(1)(B). In addition, its DMCA safe harbor defense fails because the webpages that Roblox relies upon to establish that defense do not establish beyond dispute that Roblox satisfies the safe harbor's other requirements. Roblox maintains that its Terms of Use, DMCA Guidelines, and Community Standards establish that it has policies in place to prohibit copyright infringement and comply with the DMCA, including a procedure for users to notify it about infringing material and a policy of taking down that material upon receiving a valid request. Although the Court can take judicial notice of the webpages' existence and content, it cannot take judicial notice of the truth of any representations therein. While the Court can conclude from those materials that Roblox represented to the public that it had a policy of complying with the DMCA, the Court cannot conclude that Roblox actually had such a policy or complied with the terms stated therein.

CONCLUSION

For the foregoing reasons, the Court grants Roblox's motion to dismiss the contributory copyright infringement claim but denies its motion to dismiss the direct and vicarious copyright infringement claims. Robinson may file an amended complaint within 21 days of this order.

IT IS SO ORDERED.

Dated: March 24, 2025

P. Casey Pitts
United States District Judge